

Opening Statement of the Honorable Lee Terry
Subcommittee on Commerce, Manufacturing, and Trade
Hearing on H.R. ___, a “Bill to Enhance Federal and State Enforcement of Fraudulent
Patent Demand Letters”
May 22, 2014

(As Prepared for Delivery)

Today, we examine a discussion draft of legislation to address the growing problem of unfair and deceptive patent demand letters.

We have heard from numerous businesses that are desperate for relief from patent trolls, and I believe there is a narrow path forward to provide that relief.

The policy goals we consider here today are not a matter of partisan politics. Because of fraudsters, small businesses all over the United States are learning quickly that their everyday activities may or may not be infringing a patent that a mysterious company may or may not own.

These small businesses are faced with paying counsel to investigate the claim or paying a licensing fee.

Either way, our small businesses incur unnecessary costs at a time when new start-ups are down.

In one example, homebuilders across the nation—a significant majority of which are ten employees or less—have received vague and misleading letters about a patented process for removing moisture during the construction of a building. We have also heard from retailers about online shopping carts, from hotels about WiFi, and new industries become targets everyday.

These are a few of the countless examples I’ve heard that suggest this problem is in fact a growing trend. Now we turn to the nuts and bolts of how we accomplish the task before us, and I thank the witnesses for being here today to do just that. Our panel reflects a full range of opinions on what should or should not be required in a patent demand letter.

There is not yet agreement, but after hearing from all sides today we must find a way forward and thread the proverbial needle with this legislation.

For example, what thresholds should be met before fines can be levied? Some argue that the Federal Trade Commission and State AGs should have to prove that false statements are made with some level of intent in order to bring an enforcement action and that actions should only be brought where there are a number of false letters being sent.

Others support something more in line with a strict liability approach to any and all demand letters.

Moreover, compelling certain disclosures may implicate the First Amendment, and I intend for this legislation to withstand a constitutional challenge.

The scope of the legislation is also a point of contention. The discussion draft focuses on those who are least able to understand these letters and who would benefit most from truthful statements and more detail.

On the other hand, we must be careful not to implicate letters sent between two large patent owners with the resources for in-house patent counsel, especially those with prior business relationships.

These groups are more accustomed to dealing with patent issues, and are often trying to avoid litigation. If our legislation inadvertently implicates these letters, we could invite gamesmanship on the part of the would-be licensee.

Once again, I thank the witnesses for their participation and I look forward to lively debate on these and other issues surrounding the bill.

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